

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATHALY CORTEZ, individually and on behalf of similarly situated individuals

Plaintiff

V.

CASA DO BRASIL, LLC

Defendant

CIVIL ACTION NO. 4:21-cv-03991

DECLARATION OF JARBAS GOTTARDO

1. My name is Jarbas Gottardo. I am over the age of 18, of sound mind, capable of making this Declaration, and fully competent to testify as to the matters stated herein.
2. I am the General Manager of the Casa do Brasil restaurant located in College Station. I have served as the General Manager of this restaurant since it was opened on May 1, 2018.
3. I hired Plaintiff Nathaly Cortez to work at Casa do Brasil. When she was promoted to the position of Server, I informed her that she would be paid \$2.13 per hour, that the remainder of her pay would be paid through tips received and that her tips would be included within a tip pool, in which the cash and credit card tips of all tipped employees – Servers, Bartenders, Gauchos and Customer Service Representatives (CSRs) – on a given shift would be collected and divided among those employees, as well as Bus Boys.
4. From the time that the restaurant in College Station opened until approximately July, 2021, I verbally notified Servers, CSRs, Gauchos and Bartenders who I hired and whose orientation I conducted, and who were paid less than \$7.25 per hour, that they would be paid an identified hourly rate, which amount varied, plus credit card tips received. I also informed them that their credit card and cash tips would be included within a tip pool, in which the cash and credit card tips of all tipped employees – Servers, Bartenders, Gauchos and Customer Sales Representatives – on a given shift would be collected and divided among those employees, as well as Bussers. I instructed the other Managers during this period of time that when they performed employee orientation on individuals hired as a Server, Bartender, Gauchos or CSRs that all of these individuals should receive the same information regarding their pay. I believe, based on my discussions with the other Managers, that these instructions were followed, and I am not aware that these instructions were not followed by the other Managers. Additionally, employees were asked to sign a “Tip Pooling Agreement,” generally informing employees regarding the tip pool that was in effect. A true and correct copy of the Tip Pooling Agreement signed by Nathaly Cortez is attached hereto as Exhibit A-1.

5. Beginning in approximately July, 2021, Casa do Brasil created documents that were provided to Servers, Bartenders, Gauchos and CSRs regarding their manner of payment and the tip pool. True and correct copies of the "Tip Reporting Acknowledgment," "Tip-Pooling Agreement" and "Notice to Tipped Employees" are attached hereto as Exhibits A-2, A-3 and A-4, respectively. All such employees are asked to read and sign these documents, which are maintained in their respective personnel files.
6. Plaintiff Nathaly Cortez never worked for Casa do Brasil as a Customer Service Representative ("CSR").
7. I have reviewed Exhibit 4 to Plaintiffs' Motion to Authorize Notice to Potential Plaintiff ("Plaintiffs' Motion"), and it is a true and correct copy of the job description for the CSR position. The job description accurately describes the job duties of a CSR. The primary duty of a CSR is to work as a member of the client service team, along with Servers, Bartenders, Gauchos and Bussers, in serving customers. Essentially, CSRs perform the same duties as a Server, supporting the Servers within an identified area of the restaurant by assisting in customer service. Just as Servers are assigned to specific tables during a shift, CSRs are assigned to a larger number of tables during a shift, as the tables within the CSRs' assigned area are also being served by assigned Servers. When asked by a Manager of the restaurant, CSRs may also perform additional duties, such as assisting in Server training, discussing available wines during staff meetings and assisting with duties related to the closing of the restaurant. Other Servers also participate in the Server training process.
8. All CSRs are paid an hourly rate plus tips. None of the CSRs have ever been paid a salary. I believe that all CSRs are guaranteed that their hourly pay and credit card tips would equal at least a certain amount per hour for the pay period, typically over \$20.00 per hour. If those amounts do not equal the guaranteed amount, Casa do Brasil pays an additional amount of money to ensure that the CSR's pay for the pay period is equal to the promised minimum payment. I believe that these additional payments are reflected as "Misc Earnings" or "Guarantee" on employee pay statements.
9. Many, but not all, Servers are also guaranteed that their hourly rate and credit card tips will equal at least a certain amount per hour for the pay period, typically \$20.00 per hour. If those amounts do not equal the guaranteed amount, Casa do Brasil pays an additional amount of money to ensure that the Server's pay for the pay period is equal to the promised minimum payment. I believe that these additional payments are reflected as "Misc Earnings" or "Guarantee" on employee pay statements.
10. When Nathaly Cortez completed her training to become a server and receive tips, I promised that she would earn \$20.00 per hour as a server. When her hourly rate of \$2.13 and credit card tips did not equal or exceed the amount of her guarantee, I authorized the payment of an additional amount of money to her in order for her pay during the pay period at issue to equal the guaranteed amount, \$20.00 per hour. I believe that these additional amounts paid to Nathaly Cortez were reflected on her pay statements as "Misc. Earnings," an example of which is reflected on Exhibit 1C to Plaintiffs' Motion.

11. Some, but not all, Bartenders are guaranteed that their hourly pay during a given pay period, including the hourly rate and credit card tips, will not be less than a guaranteed hourly rate, typically \$20.00 per hour. If those amounts do not equal the guaranteed amount, Casa do Brasil pays the Bartender an additional amount of money to ensure that pay for the pay period is equal to the promised minimum payment.
12. Gauchos are often guaranteed that their hourly pay during a given pay period, including the hourly rate and credit card tips, will not be less than a guaranteed amount, which varies by employee but it is typically more than the guarantee provided to Servers and Bartenders. If those amounts do not equal the guaranteed amount, Casa do Brasil pays the Gauchos an additional amount of money to ensure that pay for the pay period is equal to the promised minimum payment.
13. Casa do Brasil's restaurant is managed by a General Manager and Assistant Managers. CSRs are not management employees. CSRs do not supervise other employees. CSRs have no authority to require other employees to perform tasks, but they work with Servers to coordinate client service to the customers in a designated area. CSRs do not have the authority to hire employees, discipline employees or fire employees. CSRs do not have the authority to set employee compensation. CSRs and other employees may report information to a Manager who has the authority to hire, discipline, promote or fire employees. CSRs do not have the authority to suggest or recommend that an individual be hired or that an employee be disciplined, promoted, given a compensation increase or terminated. Information provided to a Manager by a CSR or any other employee regarding an individual may be considered by a Manager in making a decision regarding the hiring, disciplining, promoting, paying or firing of an individual, but it is not given any weight as a suggestion or recommendation. CSRs do not have the authority to discount or "comp" customer meals, unless a Manager has authorized a CSR to do so through the Point of Sale ("POS") system through which customer orders are maintained and customer invoices are generated.
14. Casa do Brasil does not have an official time when the restaurant is closed. While it differs based on the day, we typically stop seating customers at 9:30 pm, and the restaurant remains open until all customers have left and closing duties have been performed. Most of the time, the restaurant is closed by or before 11:30 pm, although the time varies because of the fact that customers may still be in the restaurant or closing duties remain incomplete.
15. Hourly-paid employees at Casa do Brasil have been required to record their hours worked from the time that the restaurant opened to the current time through the POS system, which records the start time and the end time. Managers have the ability to make appropriate changes to the time record in the POS system, which changes are identified in a time audit report, such as the time audit report attached as Exhibit 1D to Plaintiffs' Motion. If an employee forgets to clock in, for example, a Manager can change the start time to reflect the correct start time, which change is recorded in the time audit report. If an employee forgets to clock out, the POS system automatically records the end time as 4:00 a.m. on the following day. In such a situation, the end time in the POS system is changed to the time when the employee should have clocked out of the POS system. Examples of such

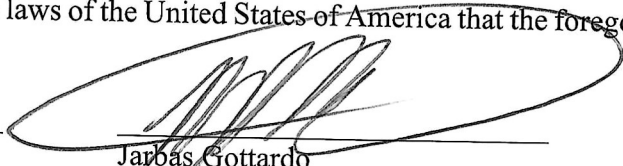
changes in Ms. Cortez' start and end times are reflected on Exhibit 1D. Other changes identified on Exhibit 1D related to other instances in which Ms. Cortez failed to correctly record her start or stop time, whether at the beginning or end of a shift or for a break.

16. To the extent that other hourly-paid employees at Casa do Brasil failed to accurately record their hours worked, changes to their time record could be made in the POS system. Such changes would also be identified in a time audit report, which does not record the reason for the change made.
17. In addition to recording hours worked by employees, the POS system was also used by employees to record customer orders, customer bills related to such orders and customer payments, including tips. The POS system can identify the amount of a credit card tip left by a customer when customer's payment is recorded in the POS system, but the POS system does not calculate the credit card tips to be paid to each tipped employee based on the tip pool. Credit card tips paid to tipped employees as a result of the tip pool were calculated by a different software system. Since the time that the restaurant has opened, we have used three different software systems to calculate the credit card tips owed as a result of the tip pool: (1) Interconnect, from May 1, 2018, until approximately October, 2020; (2) Suntek, from the end of October, 2020, through June or July, 2021; and (3) Gratuity Solutions, from July, 2021, through the present. It is my understanding that the credit card tip data from the POS system is used by the software system being used to calculate the tips owed to each tipped employee working on a shift based on the tip pool formula identified to tipped employees. It is my understanding that the result of the calculations from the software system are put into the payroll system by an employee, currently Ms. Raquel Belnap, for payment to each employee.
18. I have reviewed Exhibits 1A and 1B to Plaintiffs' Motion. Exhibit 1A is the "Employee Timecard" from the POS system. Exhibit 1A identifies the "Non-Cash Tips" that were provided by customers using credit cards for the tables opened and served by Ms. Cortez on the dates identified. As explained previously, the "Non-Cash Tips" identified on Exhibit 1A are not the credit card tips paid to Ms. Cortez, because the credit card tips paid to her were based on the tip pool. Exhibit 1B is a report from Interconnect. Exhibit 1B identifies the "Non Cash Share" paid to Ms. Cortez as the credit card tips calculated by Interconnect based on the tip pool for the dates identified.
19. I have reviewed Exhibit 16 to Plaintiffs' Motion. Exhibit 16 is Casa do Brasil's current Servers Training Manual for the restaurant in College Station, Texas, as it was revised approximately five months ago. Exhibit 16 identifies me, Jocemar Suzin and Cameron Rogneby as "Managers" on page two of the Manual. Mr. Suzin and Mr. Rogneby are currently employed as Assistant Managers at the restaurant in College Station, Texas. Previously, Mr. Suzin and Mr. Rogneby were employed as CSRs. They were not employed as CSRs during the period in which Exhibit 16, in its current form, was created and distributed to employees.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: _____

10-11-2022

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, enclosed within a large, hand-drawn oval.

Jarbas Gottardo
General Manager
Casa do Brasil, LLC

EXHIBIT A-1

Tip Pooling Agreement

Congratulations and welcome to the team

The following tip pooling guidelines apply to eligible employees who participate in Casa do Brasil tip pooling agreement.

Here at Casa do Brasil, we believe everyone who contributes to the chain of service to our guests impacts the overall guest experience, which impacts the tips left by the guest. Therefore, we have a tip-sharing program in which all non-management employees who contribute to guest service receive a share of the tips collected. These include servers, bussers, and bartending services.

It is the policy of Casa do Brasil to comply with federal and state laws regarding payment of wages and tax reporting tips/gratuities. It is the employee's responsibility to report and disclose such information.

By signing below, I acknowledge that I understand the guidelines of Casa do Brasil tip pooling agreement.

Matthew Arroyo
Signature

10/19/20
Date

**CASA^{DO}
BRASIL**
BRAZILIAN STEAKHOUSE

EXHIBIT A-2



Tip Reporting Acknowledgement

Understanding tax laws can be difficult. This acknowledgement form is designed to help you understand your responsibilities for tip reporting. These rules apply to any tips you receive, either from a customer or another employee.

There are three key facts to remember:

Tax laws require you to keep records of all of your tips, tip-outs and tip-sharing.
Tax laws require you to report 100% of your tips to your employer (unless they total less than \$20 for a month).

Tipped employees are required to keep evidence sufficient to establish their tip income, such as DAILY records of:

The amount of cash tips received directly from customers and other employee's

The amount of tips received on charge receipts * *Tips paid out to other employees and their names*

You can use IRS form 4070-A, *Employee's Daily Record of Tips*, to keep records of your cash tips, charge tips, and the tips you pay to the other employees and their names. This form is included in IRS Publication 1244, which can be obtained from the IRS website at <http://www.irs.gov/formspubs/> or ordered from the IRS by calling 1-800-829-3676.

Reporting your tips can benefit YOU:

- * Qualifying for credit or loans can be easier if you have higher reported income.
- * Your Social Security benefits will increase when you retire.
- * Keeping records and reporting all your tips can help you avoid an IRS audit, or defend your tax returns if you are audited.
- * Failure to report tips to your employer can result in the IRS imposing tax penalties on you.

Procedures for Tip Reporting

Report cash tips upon completion of your shift when prompted prior to signing out.

Credit card tips are reported with each bi-weekly payroll cycle.

Employee Tip Reporting Acknowledgment

I have read, or had read to me, the "Tip Reporting Acknowledgment" Document.

I have received training regarding my company 's procedures in reporting tips to the company .

I understand that failure to follow company procedures may result in disciplinary action.

Employee Name: _____

Employee Signature: _____ Date: _____

Manager Signature: _____ Date: _____

EXHIBIT A-3



TIP-POOLING AGREEMENT

During my employment with Casa Do Brasil, I agree to participate in the Tip Pooling Agreement. Casa Do Brasil is a team-oriented restaurant and the Tip Pooling Agreement reflects that fact. All employees who participate in the tip pool contribute to the dining and service experience of every guest.

During lunch and dinner hours the total tips will be divided by share relative to each other. The total tips will be divided to ensure that the tips of the Busser are 20% that of a Wait Staff Member, and that the Customer Service Representative tips are 80% of the Wait Staff Member. In summary, the total tips per share of a whole will be: 20%, 100%, and 80%, for the Bussers, Wait Staff Members, and Customers Service Representatives respectively.

Casa Do Brasil will seek to pay its tipped employees any credit card tips due in the employee's next paycheck but will always comply with state and federal law in paying its tipped employees any tips due.

Cash Tips

Cash tips shall be immediately remitted to the cash tip box. Failure to immediately remit all cash tips to the tip box will be grounds for disciplinary action up to and including termination. All cash tips will be calculated based on the tenure and pro-rata formulas described above. Casa Do Brasil will seek to pay its tipped employees any cash tips due at the employee's next scheduled shift at the restaurant but will always comply with state and federal law in paying its tipped employees any tips due.

Additional Information

It is not the intention of Casa Do Brasil to keep any tip income; Casa Do Brasil merely intends to collect all the tips so that they may be properly allocated among employees who are eligible to share in the tip pool.

The Tip Pooling Agreement is not a contract of employment. Your employment relationship with Casa Do Brasil is voluntary and is subject to termination by either yourself or Casa Do Brasil, with or without cause, at any time either party believes such action is appropriate.

Employee Name (Print)

Date

Employee's Signature

EXAMPLE 1 (TIP DISTRIBUTION BASED ON TENURE):

\$1,000 in tips to be shared equally amongst 9 servers and 1 Customer Service Representative:

- \$102.04 to Servers (100% of a share)
- \$81 to Customer Service Representative (80% of a share)

EXHIBIT A-4



NOTICE TO TIPPED EMPLOYEES

Welcome to Casa Do Brasil! Casa Do Brasil employs various employees it considers “tipped employees,” such as servers, bartenders, gauchos, customer service representatives, etc. The following guidelines apply to tipped employees:

- Your position is that of a tipped employee, meaning that you can earn tips in addition to your hourly cash wage.
- You will receive a cash wage of at least \$2.13 per hour. Depending upon how long you have been employed with us and your experience, you may be paid more than \$2.13 per hour, but you will not be paid less.
- Casa Do Brasil will always ensure that you are paid at least minimum wage (and overtime, when due). Casa Do Brasil will claim up to \$5.12 as a tip credit for every hour you work (the difference between your hourly wage of \$2.13 per hour and the federal minimum wage of \$7.25 per hour).
- The tip credit taken by Casa Do Brasil cannot be greater than the value of tips you receive. So, if you only make \$3.12 an hour in tips one week, plus a cash wage of \$2.13/hour, Casa Do Brasil will pay you an additional \$2.00 per hour for that week.
- Casa Do Brasil operates a tip-pooling arrangement limited to employees who customarily and regularly receive tips. You are required to contribute 100% of the tips you receive to the tip pool. If the amount of tips you receive from the tip pool is not sufficient to cover the tip credit, Casa Do Brasil will make up the difference.
- This agreement will not apply to any employee not informed of the requirements set forth in the **Fair Labor Standards Act’s** regulations (29 CFR 531.59 and 531.60), verbally or in writing, which are set forth above.

Please sign and date this notice indicating that you understand it, and return it to your manager. Contact the general manager if you have any questions. Thank you.

Employee Name (Print)

Date

Employee’s Signature